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State v. McAmis Appellant's Brief Dckt. 40718

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 GREGORY MCAMIS,)
)
 Defendant/Appellant.)
 _____)

NO. ~~40418~~

40718
Adams Co. 2006-6057

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADAMS

HONORABLE BRADLEY S. FORD
District Judge

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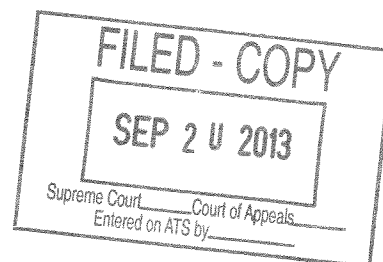


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STATEMENT OF THE CASE

Nature of the Case

Petitioner appeals from the denial of his motion to withdraw guilty plea following the granting of post conviction relief and an order to be resentenced.

Statement of the Facts

The official version of the offense is as provided in the PSI:

On May 1, 2006, Adams County Sheriff's Office Deputy Okamoto received a packet in the mail from Det. Spain of the Boise Police Department regarding an alleged Grand Theft which had been perpetrated on Adams County residents, David A. James (DOB [REDACTED]) and his wife, Robin S. James (DOB [REDACTED]), who live at [REDACTED] in Council, Idaho. The information alleged that Gregory Scott McAmis (DOB [REDACTED]) had represented himself as a person who had the authority to sell a mobile home in Canyon County by Capitol Housing, Inc. of 7329 West Airway Ct., Ste. E in Boise. That business was incorporated under another business called Statewide Investment Equities, Inc. of 1533 N. Milwaukee Street, Ste. 191 in Boise.

Mr. and Mrs. James answered an ad that had been placed by Mr. McAmis in the Idaho Statesman listing previously occupied manufactured homes for sale. On several different days in October 2005, Mr. and Mrs. James met with Mr. McAmis who showed them various manufactured homes. On November 2, 2005, Mr. McAmis called them at home and gave them an address of a home in Canyon County that he said he had the legal authority to sell. (A 1999 GOLM, green and white, 66 feet x 27 feet) Mr. and Mrs. James went to the address, liked the home, and contacted Mr. McAmis. After returning to their home in Council, they made arrangement to purchase the house in Canyon County and planned to place it on their vacant lot in the Mesa Siding area of Adams County.

On November 2, 2005, Mr. McAmis faxed contract forms to Mrs. James, she filled it out, and faxed it back to Mr. McAmis. Next, Mrs. James wire transferred \$29,250.00 to Mr. McAmis' bank account located at the 421 North Cole Road Branch of the Bank of America in Boise. Since that time, Mr. and Mrs. James were advised of several delays in delivery, but that they were required to have the foundation and driveway built and ready to receive the house. This

caused Mr. and Mrs. James to incur more expenses, so their total bill came to \$47,987.03. In January 2006, Mr. and Mrs. James learned that Mr. McAmis didn't have the legal authority to sell the house, so they demanded a refund of the purchase price. They received no refund, so they retained an attorney to sue Mr. McAmis' company.

During an investigation, it was learned that Mr. McAmis was not and isn't a licensed real estate broker or agent, his company address is a private mail pick-up box (closed), the office where Mr. and Mrs. James had met Mr. McAmis was locked, his telephone numbers were disconnected, and Mr. McAmis had two outstanding felony warrants in Florida and Canyon County, Idaho for a similar scheme he had perpetrated against other victims.

The above information was submitted to the Adams County Prosecuting Attorney's Office, and Gregory McAmis was subsequently charged with Grand Theft by Deception. . . .

PSI, p. 3-4.

Course of Proceedings

This case has a long and tortured history. As explained in the Order Granting Post-Conviction Relief (hereinafter Order), on March 2, 2007, Petitioner was charged with Grand Theft by Deception and Persistent Violator. (R. p. 16.) He pled guilty to one count of Grand Theft and the Persistent Violator charge was dismissed. (R. p. 16.) He was sentenced by the original district judge to 11 years with the first 5 years fixed to run concurrent with a pending Canyon County case. (R. p. 16.)

After a failed direct appeal, Petitioner timely filed the instant petition for post conviction relief claiming ineffective assistance of counsel because his attorney failed to object to the state's breach of plea agreement at sentencing when it failed to recommend the sentence it promised. (R. p. 17-18.)

The district court ultimately found in Petitioner's favor, holding that the prosecutor breached the plea agreement and that counsel was ineffective for failing to object. (R. p. 26.) However, the district court ordered a resentencing as a remedy, rather than allowing Petitioner to withdraw his guilty plea.¹ (R. p. 28.)

Shortly before the resentencing, Mr. McAmis filed a motion to withdraw guilty plea based on new information he learned as part of his research for his new sentencing hearing. (R. p. 44.) The court denied said motion. (R. p. 47.) At the resentencing, the court imposed a sentence of 10.5 years with the first 4.5 years fixed to run concurrent with a Canyon County case.² (R. p. 54.)

Appellant timely appeals. (R. p. 56.)

¹ The refusal to allow Petitioner to withdraw his guilty plea as a remedy is the subject of an appeal in Docket no. 40417.

² Incidentally, Mr. McAmis had already served more than the fixed time on his sentence and had been passed full term by the parole board in the Canyon County case. (Tr. 1/4/2013, p. 7-9.)

ISSUE

Whether the district court erred when it denied the motion to withdraw guilty plea.

ARGUMENT

THE DISTRICT COURT ERRED WHEN IT DENIED THE MOTION TO WITHDRAW GUILTY PLEA

A. I.C.R. 33 and Standard of Review

Idaho Rule of Criminal Procedure 33(c) provides as follows:

Withdrawal of plea of guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

I.C.R. 33.

Since the sentence had been vacated when Mr. McAmis moved to withdraw his guilty plea, the standard for a pre-sentence motion applies. The standards are as explained by the Court of Appeals in *State v. Rose*, 122 Idaho 555 (Ct.App. 1992).

Under I.C.R. 33(c), a criminal defendant may withdraw a plea of guilty prior to sentencing upon a showing of just cause. The standard for review on appeal in cases where a defendant has attempted to withdraw a guilty plea is whether the district court abused its discretion in denying the motion. *Carrasco*, 117 Idaho at 298, 787 P.2d at 284. The presentence withdrawal of a guilty plea is not an automatic right. *Id.* The defendant has the burden of proving that the plea should be withdrawn. *Id.* Failure to present and support a plausible reason, even absent prejudice to the prosecution, will weigh against granting withdrawal. *State v. Rodriguez*, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct.App.1990) (citing *State v. Ballard*, 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1988)).

Id. p. 559 (footnote omitted).

Whether to grant a motion to withdraw a guilty plea lies in the discretion of the district court and such discretion should be liberally applied. *State v. Freeman*, 110 Idaho 117, 121, 714 P.2d 86, 90 (Ct.App. 1986). Appellate review of the denial of a motion to withdraw a plea is limited to determining whether the district court exercised sound judicial discretion as distinguished from arbitrary action. *Id.*

B. The Motion to Withdraw Guilty Plea

Two days before the resentencing, Mr. McAmis, through counsel, brought a motion to set aside plea of guilty. (R. p. 44.) His stated grounds were that there was new information the defendant had obtained as part of his research into his new sentencing hearing. (R. p. 44.)

At the day of the sentencing the motion to withdraw guilty plea was taken up. Defendant's Exhibit A, which was prepared/compiled by Mr. McAmis himself and comprised some 112 pages, was entered into evidence. (Tr. 1/4/2013, p. 7-9.)

As counsel explained, Mr. McAmis had been given the chance to review the prosecutor's file in anticipation of resentencing and found some of the documents in that file that he had not previously had access to. (Tr. 1/4/2013, p. 11-13.) The specific legal basis of the motion to withdraw guilty plea was that had Mr. McAmis had these documents and had a full understanding of the state's evidence prior to entering his guilty plea, he would not have pled guilty. (Tr. 1/4/2013, p. 13-14.) In other words, the defendant was not aware at the time of

the change of plea hearing that the state had in its possession what he believed to be evidence that negated his guilt, and had he realized it, he would not have pled guilty. (Tr. 1/4/2013, p. 21-22.)

The defendant's version of events appearing at the second page of Exhibit A summarizes what the attached documents were meant to show:

The following Documents obtained on December 7, 2012 clearly define evidence of incorrect information contained in the PSI Arrest Warrant Affidavit and the preliminary as well as sentencing hearings. The State claims that the Criminal Case is that the Defendants Company was not legitimate and had no approval to work with Vanderbuilt, AKA, Oakwood Homes in repossessing and liquidating assets and operated out of a phony address are erroneous and have no evidence in support of this claim.

The State is currently in possession of hundreds of Documents confirming the Defendants claim that the clients' money was in fact sent to Vanderbuilt Homes for a 1999 Model Home. The very moment it was received by the Defendants Company and that this property was in fact offered to the Client when the mistake was discovered and the wrong title was received. The Detectives report indicated that the Defendant hired Mobile Home Locaters to inspect and assist with the relocation of the home in question and it was their Company that first informed the Defendants wife that someone else now owned the home to be moved to the clients' property. The Defendants testimony as well as the victims testimony contained in the transcripts confirm that this Home purchased with their money was offered as compensation as well as evidence that a Law Firm was hired and a full refund was presented and both offers were refused by the client.

The evidence confirms that the two titles sent in error to the Defendants Company were purchased with the Clients money were identical in model and purchased in the same manor as all the other Homes before and after the error occurred. The further fact that the Defendants Company completed several sales after and in the same manor and for considerably higher amounts of cash and purchased Real Estate in Payete, Id., trucks and heavy equipment and entered in a partnership with Lahtah Motors to develop a Dealership in Caldwell after the title error clearly indicating a lack of Criminal Intent.

The Defendant does not deny responsibility for the poor judgment and mistakes made but ask that the facts and evidence be considered and an opportunity to repay this financial burden be granted.

As counsel explained at the hearing, the documents showed that Mr. McAmis did have a connection to the mortgage company which was repossessing mobile homes, to wit, Vanderbilt. (Tr. 1/4/2013, p. 18.) As counsel further explained, Documents 1-5 show that when the victim's money was credited to Mr. McAmis' account, he immediately wire-transferred it to Vanderbilt Mortgage and Finance. (Tr. 1/4/2013, p. 19.)

Another thing that the state had of which Mr. McAmis was unaware was the written statement of the victim which showed that the state knew that Mr. McAmis requested that the victims look at comparable homes (since they could not get the one that they wanted). (Tr. 1/4/2013, p. 20-21.) Also included was a lease of the office building and warehouse and floor plan of the warehouse, which disputed that Mr. McAmis did not have a legitimate business and only had a mail drop. (Tr. 1/4/2013, p. 21.)

As the defendant himself explained to the court, the documents show that he sent the money off as soon as he received it to Vanderbilt Mortgage (as well as for the other 22 homes that were handled in that time period), for the purchase of a 99 double-wide. Then, when they found out that they had the incorrect title and the actual home had been sold to another dealer, he asked that the victim look at the home they did have ownership of. (Tr. 1/4/2013, p. 22-23.)

Mr. McAmis admitted that he was not forthcoming, and while he said there was a title issue, he never sat down with the victims and explained exactly what

happened and instead gave the victim the run-around trying to get out of the mess. But he said that we did, in fact, purchase a 99 double-wide, with her money the minute it was received. But the victim did not like the floor plan and they were never able to come up with a deal. (Tr. 1/4/2013, p. 23.)

Mr. McAmis stated that what he is trying to show is that he did not, as the state claims, set up a company to steal two deals (the Canyon County case also), spend the money and leave the country. (Tr. 1/4/2013, p. 23.) He admitted he made a mistake and takes responsibility, but that the statements in the arrest warrant and various hearings are completely opposite of what the state's evidence clearly shows occurred. (Tr. 1/4/2013, p. 24.) In short, it was a negligent, but not intentional, situation. (Tr. 1/4/2013, p. 24.)

So again, as counsel explained, if Mr. McAmis would have realized that the state had these documents, he would not have pled guilty. (Tr. 1/4/2013, p. 26.)

The court ruled from the bench, and after explaining the standards regarding a motion to withdraw guilty plea, first ruled that the guilty plea was entered knowingly, intelligently, and voluntarily. (Tr. 1/4/2013, p. 33.) The court said there was a factual basis for the plea at the time and there still was. (Tr. 1/4/2013, p. 34.)

The court stated that the evidence presented may well go to mitigation of the sentence, but does not demonstrate the defendant is not guilty of the offense. (Tr. 1/4/2013, p. 34.) The court further said that Mr. McAmis never argued prior that he did not have an adequate opportunity, through his attorney, to review or

pursue discovery, and part of the time he was not in custody. (Tr. 1/4/2013, p. 34-35.) The court ruled that there was no showing of manifest injustice, or even good cause for setting aside the plea of guilty. (Tr. 1/4/2013, p. 35.) The court denied the motion. (Tr. 1/4/2013, p. 36.)

C. The Court Erred in Not Allowing Mr. McAmis to Withdraw His Guilty Plea

In short, the court abused its discretion in denying the motion because it did not seem to understand the real point of the motion, which is that had Mr. McAmis known at the time that the state had the evidence which he said negated his guilt, he would have gone to trial and used it.

In other words, the court's rulings seemed to miss the point, which again, is simply that he would have gone to trial if he knew the state had this evidence. First, if Mr. McAmis did not know what evidence was available for his defense, his plea could not be knowingly, intelligently or voluntarily made since he could not meaningfully balance the decision to plead guilty or go to trial without that information.

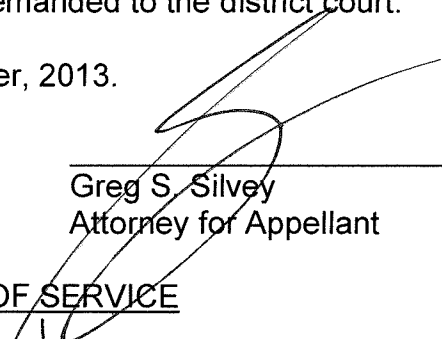
Next, it does not matter that he had not complained about not having the materials earlier, there was no suggestion that he earlier knew the state had them and instead he brought the motion as soon as he obtained them. It was pointed out at the hearing that it was not a matter of him being unaware that the documents existed because they were his documents, rather, he did not have access to them, even when he was out of custody, because they were with his wife with whom he had lost contact. (Tr. 1/4/2013, p. 30.)

Nor does it matter that the court did not believe the evidence showed he was not guilty. Instead, the issue is whether Mr. McAmis believed the jury could find him not guilty based on it, and accordingly would have gone to trial. And given Mr. McAmis' insistence that he had no criminal intent, it is clear that at the time of the original criminal proceedings, had he had this evidence which supported his defense, he would have went to trial. Thus, him now having the evidence is a just reason to allow him to withdraw his guilty plea and the court abused its discretion in finding otherwise.

CONCLUSION

Wherefore, for the reasons as stated above, Appellant/Petitioner respectfully requests that the district court's denial of motion to withdraw guilty plea be reversed and that the matter be remanded to the district court.

DATED this 20th day of September, 2013.



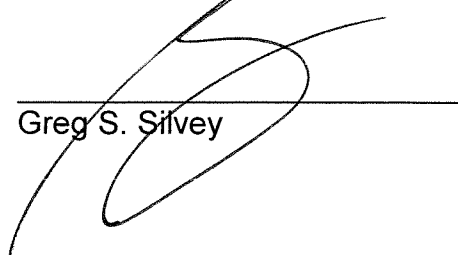
Greg S. Silvey
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by the method as indicated below:

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